

HOUSE BILL 4102
By Pleasant

AN ACT to amend Chapter 238 of the Acts of 1903; and any other acts amendatory thereto to authorize the City of Millington to levy and collect a privilege tax on new development within the City in order to provide that new development contribute its fair share on the cost of providing public facilities and services made necessary by such new development.

WHEREAS, there is substantial growth, both residential and commercial, within suburban areas of Shelby County outside the city limits of Memphis, including the City of Millington, as indicated by the significant increase in the number of both residential and commercial building permits issued by the City of Millington; and

WHEREAS, the City of Millington expects that as a result of such growth, there will be increased demand for municipal capital facilities, such as, but not limited to, roads, parks and recreational facilities, libraries, fire stations, police stations and other city governmental facilities; and

WHEREAS, the City of Millington is committed, to both present and future residents, to maintaining a level of public facilities and services at least commensurate with those presently provided; and

WHEREAS, the City of Millington is prepared to impose a fair, equitable and reasonable share of the costs of providing the necessary public facilities and services on existing residents of the City; and

WHEREAS, the City's present population, employment base, tax base and budget cannot alone support the additional revenues needed to supply facilities to serve new growth without a substantial increase in the property tax rate on existing development; and

WHEREAS, due to these circumstances, it is necessary and appropriate that the City of Millington be given authorization to extend its taxing power to enable the City to impose a fair

and reasonable share of the costs of public facilities necessitated by new development on that new development, so as not to create an unfair and inequitable burden on existing City residents; and

WHEREAS, there is precedent in the State of Tennessee for such additional tax measures to impose costs on those who benefit the most from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new development within the City of Millington; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 238 of the Acts of 1903; and any other acts amendatory thereto, is amended by adding the following new Section 16 to the Charter of the City of Millington:

SECTION 16. ADEQUATE FACILITIES TAX

16.01. This Act shall be known and cited as the "City of Millington Adequate Facilities Privilege Tax".

16.02. As used in this Act, unless a different meaning appears from the context:

(a) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes mobile home, but excludes those buildings specified in §16.06;

(b) "Building permit" means a permit for development issued in the City of Millington;

(c) "Capital improvement program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expenses, for the purchase, construction, or replacement of the physical assets of the community are included;

(d) "Certificate of occupancy" means a license for occupancy of a building or structure issued in the City of Millington;

(e) "City" means the City of Millington, Tennessee;

(f) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to or increases the floor area of a residential or non-residential use;

(g) "Dwelling unit" means a room or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly, or longer basis; physically separated from any other room(s) or dwelling unit(s) which may be in the same structure; and containing independent cooking and sleeping facilities;

(h) "Floor area" means the total of the gross horizontal area of all floors, including usable basements and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings or the center lines of party walls separating such buildings or portions thereof, or within lines drawn parallel to and two feet (2") within the roof line of any building or portions thereof without walls, but in the case of nonresidential facilities, excluding arcades, porticoes, and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas;

(i) "General plan" means the official statement of the municipal planning commission which sets forth major policies concerning future development of the jurisdictional area and meeting the provisions set forth in general law. For the purposes of this Act only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage;

(j) "Governing body" means the Board of Mayor and Aldermen of the City of Millington, Tennessee or any successor legislative body of the City;

(k) "Major street or road plan" means the plan adopted by the municipal planning commission pursuant to general law showing among other things, the

“general location, character, and extent of public ways (and) the removal, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways”;

(l) "Non-residential" means the development of any property for any use other than residential use, except as may be exempted by this Act;

(m) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number;

(n) "Place of worship" means that portion of a building owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status;

(o) "Public buildings" means buildings owned by the State of Tennessee or any agency thereof, a political subdivision of the State of Tennessee, including, but not necessarily limited to counties, cities, school districts and special districts, or the federal government or any agency thereof;

(p) "Public facility or facilities" means a physical improvement undertaken by the City of Millington, including, but not limited to, the following: roads, bridges, parks and recreational facilities, jail and law enforcement facilities, schools, libraries, government buildings, fire and police stations, sanitary landfills, water, wastewater and drainage projects, airport facilities, and any other governmental capital improvement benefiting the citizens of the City of Millington; and

(q) "Residential" means the development of any property for a dwelling unit or units.

16.03. It is the intent and purpose of this Act to authorize the governing body of the City of Millington to impose a tax on new development within the City, payable at the time of issuance of a building permit, or if no building permit is required, at the time of issuance of a certificate of occupancy, so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of public facilities made necessary by such development.

16.04. Engaging in the act of development within the City of Millington, except as provided in §16.06, is declared to be a privilege upon which the City of Millington may, by ordinance of the governing body, levy and collect a tax in the manner established in §16.05.

16.05. For the exercise of the privilege described herein, the governing body of the City of Millington may impose a tax on new development within the City not to exceed fifty cents (\$.50) per gross square foot of new residential development or one dollar (\$1.00) per gross square foot of new non-residential development.

The governing body may levy the tax authorized herein by passage of an ordinance, after adopting a capital improvements program indicating the need for and the cost of public facilities anticipated to be funded, in part, by this tax. The ordinance of the governing body imposing this tax shall state the rate of tax on new residential and non-residential development. The tax rate schedule included in the ordinance levying the tax authorized herein may classify residential and non-residential uses by type for the purpose of imposing such tax.

The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations, and forms necessary to properly implement, administer and enforce the provisions of this Act.

16.06. This Act shall not apply to development of:

- (a) Public buildings;
- (b) Places of worship;
- (c) Barns or outbuildings used for agricultural purposes;

(d) Replacement structures for previously existing structures destroyed by fire or other disasters;

(e) Additions to a single-family dwelling;

(f) A structure owned by a nonprofit organization that is a qualified 501(c)(3) corporation under the Internal Revenue Code; and

(g) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, provided that the permanent structure is a residence for the owner and occupant of the mobile home.

16.07. The tax established in this Act shall be due and collected at the time of application for a building permit for development as herein defined, or if no building permit is required, at the time of application for a certificate of occupancy, by a municipal official duly authorized by the governing body to issue building permits and/or certificates of occupancy. No building permit for development as herein defined or, if applicable, certificate of occupancy shall be issued within the City unless the tax has been paid in full to the City.

16.08. All tax funds collected pursuant to this Act shall be deposited and accounted for in a special revenue or capital projects fund by the City, and shall be used for the purpose of providing public facilities reasonably related to new development.

16.09. The authority to impose this privilege tax on new development within the City is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land development regulatory measures granted either by the private or public acts of the State of Tennessee and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

16.10. Any person aggrieved by the decision of the City building official or other responsible official concerning the levying of a tax as provided for in this Act may obtain review of the official's decision in the following manner:

(a) The aggrieved party shall pay the disputed amount to the City, with a notation on the payment or in writing accompanying the payment that it is made under protest.

(b) The aggrieved party shall request an appeal of the decision of the official in writing within ten (10) days of the protest and payment.

(c) Appeals shall be heard by the governing body. A hearing shall be scheduled within forty-five (45) days of the City's receipt of the written request for appeal.

(d) The governing body shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued to a date certain by a majority vote of the governing body for the purpose of securing further information, in which case the decision shall be rendered within thirty (30) days of the date to which the hearing is continued.

(e) The governing body shall act as a quasi-judicial body, whose purpose is to determine the intent of this Act, its applicability to the appellant, and to rule upon the interpretation of the official. The governing body shall not be bound by formal rules of evidence applicable to the various courts of the State.

(f) Hearings before the governing body shall proceed as follows:

(1) The building official or other appropriate official shall explain the ruling and the reasons for the ruling;

(2) The appellant shall explain the reasons for protesting the ruling;

(3) The governing body may request further information from any City official, including, but not limited to the city attorney, the city engineer or the city planning staff. The governing body shall not have the power of subpoena; and

(4) The governing shall deliberate and render a decision by a majority vote. A decision shall be reduced to writing; copies of the decision shall be sent to all parties; and the decision shall become a part

of the minutes of the governing body. The decision of the governing body shall be final, except that either the building official or the person aggrieved may seek review of the governing body's actions by certiorari and supersedeas to the Chancery Court of Shelby County, Tennessee, as provided by state law.

16.11. The provisions of this Act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to the City of Millington. This Act shall be deemed to create an additional and alternative method for City to impose and collect taxes for the purpose of providing public facilities within the City.

16.12. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions this Act are declared to be severable.

SECTION 2. This Act shall have no effect within the City of Millington unless it is approved by a two-thirds (2/3) vote of the Board of Mayor and Aldermen of the City of Millington within one (1) year of the effective date of this Act. Its approval or nonapproval shall be proclaimed by the presiding officer of the Board of Mayor and Aldermen and certified by such officer to the secretary of state.

SECTION 3. For the purpose of approving or rejecting the provisions of this Act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes it shall become effective upon being approved as provided in Section 2.